IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

FAO.No. 38 of 2007()

AGAINST THE ORDER DATED 04/11/2006 IN IA 1994/03 IN OS.289/2000 of PRINCIPAL SUB COURT, PALAKKAD
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: APPELLANT/PETITIONER/IST DEFENDANT

JANAKI, D/O.LATE KRISHNAN,
AGED 71 YEARS, PARAMESHWARA VIHAR,
VAITTILA, ERNAKULAM.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS: PLAINTIFF/2ND & 3RD DEFENDANTS

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1. E.K.SUMITHRA, W/O.UNNIYAPPAN,
AGED 61 YEARS, "USHAS" NEAR CEDT,
POST REC, CALICUT.

2. RADHAKRISHNAN, S/O.LATE
KUTTIKRISHNAN, AGED 51 YEARS,
MANIYANKODE, MANNUR P.O., PALAKKAD DT.

3. SWAYAMPRABHA, W/O.CHANDRAN,
AGED 49 YEARS, KARAKKAD,
MANNUR P.O., PALAKKAD DT.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V.Giri, JJ.

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F.A.O.No.38 of 2007

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Dated this the 20th day of August, 2007.

JUDGMENT

Giri,J.

First respondent herein filed O.S.No.289 of 2000 before the Sub Court, Palakkad seeking partition of the plaint schedule properties into three equal shares and allotment of one such share to the plaintiff. Plaint 'A' schedule properties are landed properties. Plaint 'B' schedule is described as value of the trees cut and removed. Defendants were set ex parte and an ex parte decree came to be passed on 27.6.2001. I.A.No.1994 of 2003 was filed by the first defendant, the appellant herein, for setting aside the ex parte decree. The said application also came to be dismissed for absence of the first defendant, petitioner, on 4.11.2006. Appeal has been preferred by the first defendant against the said order. It was admitted by both sides that the

dispute is now confined to plaint 'B' schedule property, which is described as the value of the trees cut and removed. Question as to what would be the value of such trees, if any, and as to who was responsible for cutting and removal of the trees are still disputed matters. We note that the first defendant alone filed an application to get the ex parte decree set aside and it is only the first defendant, who has come up in appeal before this Court as well.

2. On going through the records and after hearing counsel on both sides, we are of the view that the ex parte decree is liable to be set aside. It would be more appropriate that the parties are permitted to contest the matter. We have already recorded the submission made on behalf of the appellant - first defendant that the pending dispute is only with regard to plaint 'B' schedule property. Nevertheless, it may not be proper to set aside the ex parte decree only in part.

3. For the reasons mentioned above, appeal is allowed, order of the court below is set aside, consequently I.A.No.1994 of 2003 filed before the court below will stand allowed. Court below shall proceed further with the suit. Court below shall also take

note of the fact that the appellant – first defendant has made it clear before this Court that the current dispute is only with regard to plaint 'B' schedule property.

Appeal is allowed on the above terms. No costs.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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